

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 21 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

EDDIE L.,	)	2 CA-JV 2010-0088
	)	DEPARTMENT A
Appellant,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
ARIZONA DEPARTMENT OF ECONOMIC	)	Appellate Procedure
SECURITY, JULISSA L., and KYLEENA L.,	)	
	)	
Appellees.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J18061000

Honorable Gus Aragón, Judge

AFFIRMED

Sarah Michèle Martin

Tucson  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By Dawn R. Williams

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

HOWARD, Chief Judge.

¶1 Eddie L. appeals from the juvenile court’s order terminating his parental rights to his children, Julissa L. and Kyleena L., born in 2007 and 2008, respectively, based on the grounds of abandonment, neglect or abuse, mental illness or history of chronic substance abuse, and length of time in care.<sup>1</sup> See A.R.S. § 8-533(B)(1), (2), (3), and (8)(b). On appeal, Eddie argues there was insufficient evidence to support the court’s finding that termination of his parental rights was in the children’s best interests. We affirm.

¶2 A juvenile court may terminate a parent’s rights if it finds by clear and convincing evidence that any one of the statutory grounds for severance exists and if it finds by a preponderance of the evidence that termination of the parent’s rights is in the children’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). “On review, . . . we will accept the juvenile court’s findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous.” *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). And, we view the evidence in the light most favorable to upholding the court’s ruling. See *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000).

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<sup>1</sup>Although the juvenile court relied on length of time in care as a ground for termination in its written findings of fact and conclusions of law, it did not specify this ground in its oral ruling at the termination hearing. However, because Eddie does not dispute the sufficiency of the evidence supporting the grounds for termination, and because the court based its ruling on three additional statutory grounds, the court’s apparent oversight in failing to include this ground in its verbal ruling is not significant. Cf. *Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 27, 995 P.2d 682, 687 (2000) (any proven statutory ground adequately sustains juvenile court’s severance order).

¶3 Julissa and Kyleena, who have lived with their paternal grandparents since at least July 2009, were adjudicated dependent as to Eddie in February 2008 and September 2009, respectively. Eddie was provided various services, including to address his violent behavior and tendencies.<sup>2</sup> His participation in those services was, at best, inconsistent. The juvenile court changed the case plan goal from family reunification to severance and adoption in November 2009, and ordered the Arizona Department of Economic Security (ADES) to file a motion to terminate both parents' rights. In its motion, ADES alleged as grounds for termination abandonment, neglect or abuse, mental illness or history of chronic substance abuse, and length of time in out-of-home care. ADES specifically alleged Eddie "presents as an aggressive and violent person who is at high risk of harming the mother and children." *See* § 8-533(B)(1), (2), (3), and (8)(b). ADES also asserted that terminating the parents' rights was in the children's best interests. After a contested severance hearing held in February 2010, from which Eddie voluntarily absented himself, the court terminated his parental rights to the children based on the grounds asserted in the motion, and found that severance was in the children's best interests.

¶4 Eddie does not challenge the juvenile court's findings regarding the grounds for termination. Rather, he contends there was insufficient evidence to support the court's finding that terminating his parental rights was in the children's best interests. He also asserts that, because it remains unknown whether the mother's parental rights to

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<sup>2</sup>At the severance hearing, the juvenile court continued the mother's severance hearing to a later date. The mother is not a party to this appeal.

the children will be terminated, evidence that the children are adoptable or would be permanently placed with the grandparents was “questionable at best.” He further claims there was no evidence the children would be harmed by continued contact with him.

¶5 To establish that termination is in a child’s best interests, ADES must prove that the child either would benefit from the severance or be harmed if the parental relationship continues. *Mary Lou C. v. Ariz. Dep’t of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). “A best-interests determination need only be supported by a preponderance of the evidence.” *Bobby G. v. Ariz. Dep’t of Econ. Sec.*, 219 Ariz. 506, ¶ 15, 200 P.3d 1003, 1008 (App. 2008). “In combination, the existence of a statutory ground for severance and the immediate availability of a suitable adoptive placement for the children frequently are sufficient to support a severance order.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 8, 100 P.3d 943, 946 (App. 2004).

¶6 Child Protective Services case manager Francisco Rendon documented evidence of the “long standing unhealthy and violent relationship” between the parents, which included several reported incidents of domestic violence. In addition, Eddie was “psychiatrically hospitalized on 6/20/09 for suicidal and homicidal ideations.” The juvenile court thus concluded in its written findings of fact and conclusions of law that Eddie “engages in domestic violence with the mother . . . has exposed the children to an unhealthy and volatile relationship . . . [and] presents as an aggressive and violent person who is at high risk of harming the mother and children,” findings Eddie has not challenged on appeal. Rendon also testified that, in the six months before the severance hearing, Eddie had failed to provide financial support for the children or to act in a

“parental manner” toward them, and he had spent only eight to sixteen hours with them during that six-month period. Rendon testified the children had been placed permanently with the grandparents, who want to adopt them, and they are adoptable. He responded affirmatively when asked if the children “appear happy and involved” with the grandparents. *See In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994) (juvenile court could consider whether current adoptive placement existed, whether child adoptable, or whether existing placement meeting needs). Rendon also opined that severance was in the children’s best interests and noted that, although Eddie had been given “more than enough time” to participate in and benefit from services, “[h]e continues to use drugs [and] engage in domestic violence, and he doesn’t seem to want the services so he can change his behaviors.” In addition, counsel for the children agreed with ADES that severance was in the children’s best interests.

¶7 In finding that severance was in the children’s best interests, the juvenile court stated they are adoptable “should the need arise to have them adopted.” In light of the unchallenged evidence that a continued relationship with Eddie could be harmful to the children and that they are adoptable “should the need arise to have them adopted,” the record amply supports the juvenile court’s finding that termination of Eddie’s parental rights was in the children’s best interests. Moreover, in light of the uncertain outcome of ADES’s motion to terminate the mother’s parental rights, the court properly considered the fact that the children are adoptable and might remain permanently with the grandparents.

¶8 We therefore affirm the juvenile court's order terminating Eddie's parental rights to Julissa and Kyleena.

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge